

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2003-805

January 13, 2004

CENTRAL MAINE POWER COMPANY  
Request for Approval of PPA Restructuring  
and Waiver of Bidding Requirements of  
Chapter 307

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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**I. SUMMARY**

We decline to approve a restructured power purchase arrangement between Central Maine Power Company (CMP) and CL Power Sales Eight, L.L.C. (CL Eight) or grant the requested waiver from the requirements of Chapter 307 that would be necessary to allow the sale of energy and capacity back to CL Eight according to the terms of the arrangement.

**II. BACKGROUND**

On November 3, 2003, CMP filed a request for approval of the restructuring of a power purchase agreement (PPA) with CL Eight and a request for waiver of the bidding requirements under Chapter 307 of the Commission's rules. The current CL Eight PPA is the result of a previous contract restructuring involving the buyout of CMP's power purchase agreement with Northeast Empire Limited Partnership #2 regarding its biomass facility in Ashland, Maine. As part of that buyout arrangement, CMP entered into a PPA with CL Eight and the Ashland facility ceased its power sales to CMP. Savings from the buyout resulted from replacing the facility's biomass power with cheaper system power sources. The Commission approved the buyout arrangement. *Request for Approval of the Issuance of Certificate of Public Convenience and Necessity for the Purchase of Energy and Generating Capacity from CL Power Sales Eight*, Docket No. 97-248 (June, 23, 1997).

Under the buyout arrangement, CMP makes its payments to CL Eight through a trustee who settles all payment obligations and then pays CMP an annual subordinated rebate of approximately \$1 million per year. Since the time the buyout arrangement was consummated, CL Eight's corporate parent has been sold several times, leaving TXU Europe (which is unaffiliated with CL Eight) as the guarantor of CL Eight's obligations. During October of 2002, TXU Europe was placed into the United Kingdom's equivalent of bankruptcy, which triggered defaults of CL Eight's guarantees. A result of the default was that the trustee withheld payment of CMP's subordinated annual rebate. In addition, CL Eight's ultimate power supplier, NRG Energy Inc., filed for bankruptcy in May 2003. As a consequence of these events, CL Eight and CMP

entered discussions that have led to the proposed restructured agreement that is the subject of this proceeding.

The proposed restructuring includes a modest decrease in CMP's purchase rates, but overlays it with a combination put/call option to sell the same energy and capacity back to CL Eight. The sales price will be a function of CMP's periodic entitlement auction price, subject to inflation-indexed floors and ceilings. The result of the arrangement is to bind the amounts CMP may receive for the power associated with the CL Eight PPA by the bound floor and ceiling prices, provide some savings through lower PPA rates, and reduce the payment risk of the subordinated annual rebate.

CMP estimates that the proposed restructuring would achieve approximately \$3 million in savings on a net present value basis. The majority of these expected savings derive from the reduction in CMP's purchase rates under the amended PPA. The proposed restructuring also provides an opportunity for additional savings if future electricity market prices drop below the agreed-upon floor. In such a case, CMP would have the right to sell the PPA energy and capacity back to CL Eight at a higher rate. Conversely, if market prices in the future rise above the agreed-upon ceiling, CMP would receive a lower amount than if the energy and capacity were sold through the Chapter 307 auction. The risks of this later scenario have been mitigated to some degree by a "banking" provision that would allow CMP to recoup certain of the lost revenues resulting from the ceiling in subsequent years. Finally, CMP states that the restructured agreement would effectively eliminate the risk of the annual rebate (approximately \$1 million per year) from being withheld in the future.

### **III. DECISION**

The Commission appreciates the substantial efforts of CMP and CL Eight in proposing the restructured arrangement. We certainly encourage creativity in finding ways to restructure power contracts that results in the reduction of stranded costs for the benefit of ratepayers. However, for the reasons discussed below, we do not approve the restructured arrangement as proposed.

The restructured agreement provides certain near-term PPA price reductions and a substantial reduction in the risk that the annual subordinated rebate will be withheld throughout the remaining term of the PPA. However, these benefits are offset by a potentially significant lost opportunity for the reduction of stranded costs that results from the effective cap on the amount CMP can receive from the sale of power from the CL Eight PPA.

In evaluating a restructured PPA, such as the one currently before us, we must consider potential outcomes over a wide range of possible futures. Accordingly, the known near-term benefits of the restructured arrangement must be weighed against the possibility of high electricity market price that might occur in the future. The utility sale of the entitlements from its PPAs acts as a partial hedge against high energy prices and a loss of the portion of that hedge represented by the CL Eight PPA could be

significant.<sup>1</sup> Under the proposed arrangement, the savings are certain, but relatively modest. However, the cost to ratepayers in terms of the lost opportunity to reduce stranded costs is essentially unlimited in that it is a function of the level of electricity prices. While the proposed arrangement would provide added protection if prices decline beyond expectations, there is a limit to how much prices can fall. In this sense, the proposal can be viewed as asymmetric. We also note that at times of very high electricity prices, a stranded cost hedge can be of great importance to ratepayers while, conversely, a stranded cost hedge against low market prices is less important in that ratepayers would be benefiting from low supply prices.

On balance, we conclude that the proposed restructured arrangement should be rejected. It is difficult to value the hedge against high electricity prices implicit in the current arrangement. However, in this case, it is our judgment that the benefits of the proposal do not outweigh the potential lost opportunity cost. This judgment is based, to some degree, on our overall concern about the impacts of high electricity market prices on Maine's public and our resulting inclination to act in ways to "insure" against this eventuality. We recognize that any "buyout" of a PPA (or many approaches to the restructuring of PPAs) would result in a similar loss of a hedge against high market prices. Nevertheless, our decision in this case should not be viewed as a signal that we would not approve any proposal that involves the loss of a hedge. Rather, our decision is based on the weighing of the benefits and costs of the proposal presented in this case.

Dated at Augusta, Maine, this 13<sup>th</sup> day of January, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Diamond  
   Reishus

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<sup>1</sup> The CL Eight PPA represents approximately 10% of CMP's stranded cost obligations.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.